

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

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FISCAL IMPACT STATEMENT

LS 7834

BILL NUMBER: SB 476

NOTE PREPARED: Jan 31, 2003

BILL AMENDED:

SUBJECT: Community Corrections and the Mentally Ill.

FIRST AUTHOR: Sen. Lawson C

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: X

**GENERAL
DEDICATED
FEDERAL**

IMPACT: State & Local

Summary of Legislation: This bill has the following provisions:

- (A) It requires the Department of Correction to evaluate an offender for mental or addiction disorders and to arrange for treatment of an offender with a mental or chronic addiction disorder.
- (B) It establishes a forensic collaboration program to provide services to adults with a mental illness through collaboration with criminal justice, mental health, and other service systems.
- (C) It establishes a forensic diversion program to permit an adult with mental or addictive disorders who has been charged or convicted of a crime to receive treatment instead of incarceration.
- (D) It creates the Forensic Transition Fund out of money appropriated to the Department of Correction for incarceration of individuals with a mental illness and permits counties to receive funds from the Forensic Transition Fund to operate a Forensic Diversion and Forensic Collaboration Program.
- (E) It requires the county executive to establish an advisory committee to assist the county in creating and operating the Forensic Diversion and Collaboration programs. It requires jail and Department of Correction physicians to administer appropriate drugs for the treatment of mental illness or addictive disorders if these drugs are available to Medicaid recipients.
- (F) It requires the Department of Correction to take steps to ensure that released offenders may receive Medicaid and other federal benefits as soon as possible following their release from incarceration.
- (G) It makes other changes.

Effective Date: July 1, 2003.

Explanation of State Expenditures: *Provision D - Establishing the Forensic Transition Fund:* This fund would be used to provide for the placement of individuals into a Forensic Diversion or Collaboration program. The Department of Correction (DOC) would administer the program. The funding from the program would come from deposits made by DOC based on its estimates of how much money is needed to adequately fund the program. The funding level would be based on a plan developed by DOC, reviewed by the Budget Committee and approved by the State Budget Agency.

Depending on the number of offenders identified, establishing this program and allowing these offenders to stay in their home communities could reduce the number of beds and special programs that DOC uses to accommodate these offenders.

Provision E - Medications: This bill would increase the types of drugs that would be available for offenders who are committed to DOC facilities. DOC reports that this bill could include new medications that are being approved for use and medications already on the current formulary, but are in different dosage regimens not on the formulary. As an example, generic Prozac is on the formulary, but timed-release Prozac is not. This bill also prohibits the use of prior authorization by the Department in the prescribing and administering of mental health drugs.

The added costs to the state for medications to control mental or emotional disorders would depend on the number of offenders currently receiving older medications versus the newer more expensive medications.

DOC reports that in October 2002, 2,502 offenders were prescribed some type of medication for a mental illness. In FY 2002, the pharmacy budget for psychiatric drugs was \$1.5 M. The average annual cost of older psychiatric drugs in 2003 is \$360, while the average annual cost of the newer atypical drugs is \$3,600.

In testimony before the Commission on Mental Health on August 21, 2002, Anita Glasson, MD, Regional Director of Psychiatric Services for Prison Health Services, Inc., provided statistics regarding non-formulary drug requests. From January 2002 through April 2002, there were 452 requests to prescribe non-formulary drugs. Of those requests, 430 were approved and less than 5% were denied. Non-formulary drugs that were denied were sometimes approved after the requesting physician provided additional information. Drugs not included in the formulary include Valium, Xanax, and other very addictive medications.

While this change in medications would increase costs to the state, several other costs could decrease including:

- an improvement in behavior resulting in fewer disciplinary hearings and crisis referrals;
- a reduction in drugs to treat the side effects commonly associated with older medications; and
- a potential cost reduction in staff injuries depending on the conduct of the mentally ill offenders.

How this may relate to potential reduced expenditures in a correctional system is not currently known.

Provision F - Medicaid Reinstatement: Depending on the number of offenders who might be released in any given year, FSSA would be able to absorb the cost of the necessary change. There would likely be no significant increase in benefit payments associated with the Medicaid program because this is not an expansion of services or a new category of eligible people. Rather, some individuals who were previously on the Medicaid program might become eligible again for Medicaid benefits sooner than they would otherwise.

Explanation of State Revenues:

Explanation of Local Expenditures: *Provision B - Identifying Detainees with Mental Illnesses and Serious Addictive Disorders:* Each county would be required to establish and provide procedures for the early identification of serious mental or addictive disorders among detainees including initial intake and assessment programs for individuals who are arrested. The counties would also be required to permit these persons to participate in diversion and deferral programs for accused persons if agreed to by the defendant

and the prosecuting attorney.

Provision E - Medications: Depending on the method used to control the costs of medications at the county level, this bill would increase the county expenditures for psychiatric medications that are dispensed for mentally ill persons confined in county jails.

Provision G - Diversions and Deferrals For Juvenile Offenders in Misdemeanors and Infractions: Under current law, if both the defendant and the prosecuting attorney consent, the court may order the defendant to complete either an alcohol and drug services treatment program or a mental illness treatment program if the court determines that either of these conditions were a contributing factor. If the defendant fulfills the conditions set by the court, then the court will dismiss all charges.

This bill would make two changes to this statute:

- It would take the court's discretion away from ordering the juvenile defendant into a program if both the defendant and prosecuting attorney agree.
- It would allow nonviolent Class D felonies to also be deferred

This portion of the bill could reduce the number of juveniles who might be committed to secure facilities for juveniles and increase the number of juveniles who are in mental health programs. The number of juveniles who are currently diverted under this portion of the statute is not known.

Provision G - Withholding of Prosecution of Misdemeanors for Adults: This bill would permit a prosecuting attorney to withhold prosecution if the person participates in either an appropriate alcohol and drug services treatment program or an appropriate therapy program. Since misdemeanors are punishable by a term of months in jail, this could allow more offenders to avoid jail time. These diversions would depend on whether appropriate treatment programs exist in the local community where the defendant lives.

Explanation of Local Revenues:

State Agencies Affected: Department of Correction, Office of Medicaid Policy and Planning.

Local Agencies Affected: Local Law Enforcement Agencies, Prosecuting Attorneys.

Information Sources: Department of Correction.

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